

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES GEARY KING,

Petitioner,

vs.

MAGGIE MILLER-STOUT,

Respondent.

NO. CV-05-417-FVS

ORDER DENYING MOTIONS AND
DISMISSING PETITION

BEFORE THE COURT is Mr. King's "Motion for Reconsideration of It's Order Denying Leave to Proceed *In Forma Pauperis*" and "Motion to Consolidate Matters" (Ct. Rec. 6). Petitioner did not note his motions for hearing as required by LR 7.1(h), Local Rules for the Eastern District of Washington. **PETITIONER IS CAUTIONED THAT ANY FURTHER MOTIONS SUBMITTED TO THE COURT WITHOUT NOTING THEM FOR HEARING IN COMPLIANCE WITH THE LOCAL RULES WILL NOT BE ADDRESSED BY THE COURT.**

Because Petitioner has paid the filing fee for this action, his Motion for Reconsideration is **DENIED as moot**. To the extent Petitioner is asking this court to consolidate a habeas action challenging the fact or duration of his confinement with a civil rights action challenging the conditions of his confinement, his request is **DENIED**. See *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) ("a state prisoner challenging his underlying conviction and

1 sentence on federal constitutional grounds in a federal court is
2 limited to habeas corpus ... he cannot bring a § 1983 action, even
3 though the literal terms of § 1983 might seem to cover such a
4 challenge"); see also *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir.
5 1991)(claims concerning the conditions of confinement are not
6 cognizable on habeas review). Petitioner must proceed separately as
7 to habeas and civil rights claims. Accordingly, **IT IS ORDERED** the
8 Motions (Ct. Rec. 6) are **DENIED**.

9 Also before the court is Petitioner's "Show Cause Petition" (Ct.
10 Rec. 14), which the court construes as his response to the Order to
11 Show Cause. By Order filed April 19, 2006, the court directed Mr.
12 King to Show Cause why his petition should not be dismissed. After
13 review of Petitioner's submission, the court finds he has failed to do
14 so.

15 Petitioner asserts he has a liberty interest pursuant to RCW
16 9.95.070. A review of that statute, however, shows it applies to
17 prisoners convicted of crimes committed before July 1, 1984. See RCW
18 9.95.070(1). It also applies to sex offenses committed after
19 September 1, 2001. See RCW 9.95.070(2). Petitioner's crimes, First
20 Degree Robbery and Unlawful Possession of a Controlled Substance,
21 occurred on or about August 2, 1995. Therefore, it is clear RCW
22 9.95.070 does not apply to Mr. King.

23 Petitioner again argues that because the requirement of a
24 residence pre-approval was not set forth in his judgment and sentence,
25 the Department of Corrections cannot require him to provide a pre-
26 approved residential address. Contrary to Petitioner's assertions,
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1 this has been a mandatory condition of community placement since 1992.
2 See RCW 9.94A.120(8)(b)(vi) (1992); RCW 9.94A.120(9)(b)(vi)(1995); RCW
3 9.94A.120(9)(b)(v)(1997); RCW 9.94A.700(4)(2003). He makes no
4 argument the trial court waived this condition. Petitioner has
5 presented no facts from which the court could infer he is entitled to
6 federal habeas relief. Accordingly, for the reasons set forth above
7 and in the Order to Show Cause, **IT IS ORDERED** the petition is
8 **DISMISSED with prejudice** pursuant to Rule 4, Rules Governing Section
9 2254 Cases in the United States District Courts.

10 **IT IS SO ORDERED.** The District Court Executive is directed to
11 enter this Order, enter judgment, forward a copy to Petitioner and
12 close the file.

13 **DATED** this 2nd day of June, 2006.

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15 s/ Fred Van Sickle
16 FRED VAN SICKLE
17 UNITED STATES DISTRICT JUDGE
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